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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

IN RE COLLEGE ATHLETE NIL  
LITIGATION

Case No. 4:20-cv-03919 CW

**DECLARATION OF STEVE W. BERMAN IN  
SUPPORT OF PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT AND TO  
EXCLUDE THE OPINIONS OF DR.  
GAUTAM GOWRISANKARAN AND  
BARBARA OSBORNE**

Date: Sept. 19, 2024  
Time: 2:30 p.m.  
Judge: Hon. Judge Claudia Wilken  
Courtroom: 2, 4th Floor

1 I, STEVE W. BERMAN, declare as follows:

2 1. I am an attorney duly licensed to practice law before this Court. I am a member of the  
3 Washington Bar, and I have been admitted to this Court *pro hac vice*. I am the managing partner of  
4 Hagens Berman Sobol Shapiro LLP (“Hagens Berman”) and counsel for the Class Plaintiffs  
5 (“Plaintiffs”) in this matter.

6 2. I submit this declaration in support of Plaintiffs’ Motion for Summary Judgment and  
7 to Exclude the Opinions of Dr. Gautam Gowrisankaran and Barbara Osborne. Based on personal  
8 knowledge or discussions with counsel in my firm of the matters stated herein, if called upon, I could  
9 and would competently testify thereto.

10 3. Attached as **Exhibit 1** is a true and correct copy of the Expert Report of Daniel A.  
11 Rascher, dated December 1, 2023, on behalf of Plaintiffs.

12 4. Attached as **Exhibit 2** is a true and correct copy of the Expert PCJ Rebuttal Report of  
13 Daniel A. Rascher, dated January 26, 2024, on behalf of Plaintiffs.

14 5. Attached as **Exhibit 3** is a true and correct copy of the Expert Reply Report of Daniel  
15 A. Rascher, dated February 23, 2024, on behalf of Plaintiffs.

16 6. Attached as **Exhibit 4** is a true and correct copy of the Expert Report of Hal Poret,  
17 dated December 1, 2023, on behalf of Plaintiffs.

18 7. Attached as **Exhibit 5** is a true and correct copy of the Expert Report of Darrell L.  
19 Williams, dated January 26, 2024, on behalf of Plaintiffs.

20 8. Attached as **Exhibit 6** is a true and correct copy of the Expert Report of Gautam  
21 Gowrisankaran, dated December 1, 2023, on behalf of the National Collegiate Athletics Association  
22 (“NCAA”) and Conference Defendants.

23 9. Attached as **Exhibit 7** is a true and correct copy of the Expert Rebuttal Report of  
24 Gautam Gowrisankaran, dated January 26, 2024, on behalf of the NCAA and Conference  
25 Defendants.

1           10. Attached as **Exhibit 8** is a true and correct copy of the Expert Reply Report of  
2 Gautam Gowrisankaran, dated February 23, 2024, on behalf of the NCAA and Conference  
3 Defendants.

4           11. Attached as **Exhibit 9** is a true and correct copy of the Expert Report of Ashley  
5 Langer, dated January 26, 2024, on behalf of the NCAA and Conference Defendants.

6           12. Attached as **Exhibit 10** is a true and correct copy of the Merits Rebuttal Expert  
7 Report of Barbara Osborne, dated January 26, 2024, on behalf of the NCAA and Conference  
8 Defendants.

9           13. Attached as **Exhibit 11** is a true and correct copy of excerpts from the deposition  
10 transcript of Ashley Langer, dated March 19, 2024. I received a copy of this transcript in my  
11 capacity as counsel of record for Plaintiffs in the above captioned matter.

12           14. Attached as **Exhibit 12** is a true and correct copy of the 2021-2022 NCAA Division I  
13 Manual.

14           15. Attached as **Exhibit 13** is a true and correct copy of the NCAA Interim NIL Policy.  
15 This document is stamped with the Bates Number NCAAHOUSE00228392. I received a service  
16 email from counsel for the NCAA with a copy of this document attached as part of a production of  
17 documents in the above captioned matter. This document was introduced as Plaintiffs' Exhibit 23 at  
18 the deposition of Chad Hawley on October 7, 2022.

19           16. Attached as **Exhibit 14** is a true and correct copy of the NCAA Interim Name, Image,  
20 and Likeness Policy Guidance Regarding Third Party Involvement. This document was introduced  
21 as Plaintiffs' Exhibit 35 at the deposition of Chad Hawley on October 7, 2022.

22           17. Attached as **Exhibit 15** is a true and correct copy of excerpts from the deposition  
23 transcript of Kevin Lennon, dated October 18, 2023. I received a copy of this transcript in my  
24 capacity as counsel of record for Plaintiffs in the above captioned matter.

25           18. Attached as **Exhibit 16** is a true and correct copy of excerpts from the deposition  
26 transcript of 30(b)(6) designee Kerry Kenny for the Big Ten Conference, dated October 4, 2023. I  
27  
28

1 received a copy of this transcript in my capacity as counsel of record for Plaintiffs in the above  
2 captioned matter.

3 19. Attached as **Exhibit 17** is a true and correct copy of excerpts from the deposition  
4 transcript of 30(b)(6) designee Gregory Sankey for the Southeastern Conference, dated September  
5 15, 2023. I received a copy of this transcript in my capacity as counsel of record for Plaintiffs in the  
6 above captioned matter.

7 20. Attached as **Exhibit 18** is a true and correct copy of excerpts from the deposition  
8 transcript of 30(b)(6) designee Brad Hostetter for the Atlantic Coast Conference, dated September 7,  
9 2023. I received a copy of this transcript in my capacity as counsel of record for Plaintiffs in the  
10 above captioned matter.

11 21. Attached as **Exhibit 19** is a true and correct copy of excerpts from the deposition  
12 transcript of 30(b)(6) designee Ben Tario for the Atlantic Coast Conference, dated September 8,  
13 2023. I received a copy of this transcript in my capacity as counsel of record for Plaintiffs in the  
14 above captioned matter.

15 22. Attached as **Exhibit 20** is a true and correct copy of excerpts from the deposition  
16 transcript of 30(b)(6) designee Catrina Gibson for the Big 12 Conference, dated October 18, 2023. I  
17 received a copy of this transcript in my capacity as counsel of record for Plaintiffs in the above  
18 captioned matter.

19 23. Attached as **Exhibit 21** is a true and correct copy of excerpts from the deposition  
20 transcript of 30(b)(6) designee Alexandra Breske for Michigan State University, dated August 2,  
21 2023. I received a copy of this transcript in my capacity as counsel of record for Plaintiffs in the  
22 above captioned matter.

23 24. Attached as **Exhibit 22** is a true and correct copy of excerpts from the deposition  
24 transcript of 30(b)(6) designee Jody Sykes for the University of Oregon, dated September 14, 2023.  
25 I received a copy of this transcript in my capacity as counsel of record for Plaintiffs in the above  
26 captioned matter.

25. Attached as **Exhibit 23** is a true and correct copy of the article published on ESPN.com, titled “Over 10,000 players opt in to EA Sports College Football 25,” and dated March 4, 2024. The document was introduced as Plaintiffs’ Exhibit 913 at the deposition of Edwin Desser on March 13, 2024.

26. Attached as **Exhibit 24** is a true and correct copy of Defendant NCAA’s Supplemental Responses and Objections to Plaintiffs’ First Set of Interrogatories to All Defendants that I received via service email from counsel for the NCAA.

27. Attached as **Exhibit 25** is a true and correct copy of excerpts from the deposition transcript of Gautam Gowrisankaran, dated March 26, 2024. I received a copy of this transcript in my capacity as counsel of record for Plaintiffs in the above captioned matter.

28. Attached as **Exhibit 26** is a true and correct copy of an email and attachment titled, “PSA Testing + NIL Announcement Focus Groups.” This document is stamped with the Bates Number range NCAAHOUSE00107963 – NCAAHOUSE00108044. I received a service email from counsel for the NCAA with a copy of this document attached as part of a production of documents in the above captioned matter. This document was introduced as Plaintiffs’ Exhibit 260 at the deposition of 30(b)(6) designee Jennifer Fraser for the NCAA on September 14, 2023.

29. Attached as **Exhibit 27** is a true and correct copy of a document titled, “Agenda National Collegiate Athletic Association Division I Transformation Committee.” This document is stamped with the Bates Number range NCAAHOUSE00417966 – NCAAHOUSE00417999. I received a service email from counsel for the NCAA with a copy of this document attached as part of a production of documents in the above captioned matter. This document was introduced as Plaintiffs’ Exhibit 262 at the deposition of 30(b)(6) designee Jennifer Fraser for the NCAA on September 14, 2023.

30. Attached as **Exhibit 28** is a true and correct copy of excerpts from the deposition transcript of 30(b)(6) designee Jennifer Fraser for the NCAA, dated September 14, 2023. I received a copy of this transcript in my capacity as counsel of record for Plaintiffs in the above captioned matter.

31. Attached as **Exhibit 29** is a true and correct copy of excerpts from the deposition transcript of Robert Bowlsby, dated October 24, 2023. I received a copy of this transcript in my capacity as counsel of record for Plaintiffs in the above captioned matter.

32. Attached as **Exhibit 30** is a true and correct copy of the article published on NCAA.org, titled “A letter to student-athletes from Charlie Baker,” and dated December 19, 2023. The document was introduced as Plaintiffs’ Exhibit 928 at the deposition of Ashley Langer on March 19, 2024.

33. Attached as **Exhibit 31** is a true and correct copy of excerpts from the deposition transcript of James Phillips, dated October 10, 2023. I received a copy of this transcript in my capacity as counsel of record for Plaintiffs in the above captioned matter.

34. Attached as **Exhibit 32** is a true and correct copy of an email dated December 5, 2023. This document is stamped with the Bates Number range NCAAHOUSE00526998 – NCAAHOUSE00527001. I received a service email from counsel for the NCAA with a copy of this document attached as part of a production of documents in the above captioned matter. This document was introduced as Plaintiffs’ Exhibit 843 at the deposition of Kevin Murphy on March 13, 2024.

35. Attached as **Exhibit 33** is a true and correct copy of a post published by Nicole Auerbach on Twitter.com, dated March 1, 2024, available at [https://twitter.com/NicoleAuerbach/status/1763676677194895598?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1763676677194895598%7Ctwgr%5E8e0127e8045c268e7c533ae33197bf6ff5c3dc5c%7Ctwcon%5Es1\\_&ref\\_url=https%3A%2F%2Fbleacherreport.com%2Farticles%2F10111357%E2%80%90ncaa%E2%80%90pauses%E2%80%90investigations%E2%80%90into%E2%80%90nil%E2%80%90violations%E2%80%90following%E2%80%90lawsuit%E2%80%90in-junction](https://twitter.com/NicoleAuerbach/status/1763676677194895598?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1763676677194895598%7Ctwgr%5E8e0127e8045c268e7c533ae33197bf6ff5c3dc5c%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fbleacherreport.com%2Farticles%2F10111357%E2%80%90ncaa%E2%80%90pauses%E2%80%90investigations%E2%80%90into%E2%80%90nil%E2%80%90violations%E2%80%90following%E2%80%90lawsuit%E2%80%90in-junction).

36. Attached as **Exhibit 34** is a true and correct copy of an email dated January 4, 2023. This document is stamped with the Bates Number range NCAAHOUSE00386274 – NCAAHOUSE00386275. I received a service email from counsel for the NCAA with a copy of this

1 document attached as part of a production of documents in the above captioned matter. This  
2 document was introduced as Plaintiffs' Exhibit 252 at the deposition of 30(b)(6) designee Jennifer  
3 Fraser for the NCAA on September 14, 2023.

4 37. Attached as **Exhibit 35** is a true and correct copy of a document titled, "Companion  
5 Document to the Agenda for the March 24, 2022 Joint Meeting of the Big Ten COP/C and Athletic  
6 Directors." This document is stamped with the Bates Number range BIGTEN-NIL\_00423483 –  
7 BIGTEN-NIL\_00423488. I received a service email from counsel for the Big Ten Conference with a  
8 copy of this document attached as part of a production of documents in the above captioned matter.  
9 This document was introduced as Plaintiffs' Exhibit 544 at the deposition of Kevin Warren on  
10 October 12, 2023.

11 38. Attached as **Exhibit 36** is a true and correct copy of excerpts from the deposition  
12 transcript of Darrell Williams, dated March 14, 2024. I received a copy of this transcript in my  
13 capacity as counsel of record for Plaintiffs in the above captioned matter.

14 39. Attached as **Exhibit 37** is a true and correct copy of an article titled, "Who Profits  
15 from Amateurism? Rent-Sharing in Modern College Sports," and dated July 2020. This document  
16 was introduced as Plaintiffs' Exhibit 931 at the deposition of Ashley Langer on March 19, 2024.

17 40. Attached as **Exhibit 38** is a true and correct copy of the article published on  
18 YahooSports.com, titled "Sources: College Football Playoff agrees to new contract with ESPN," and  
19 dated March 15, 2024, available at [https://sports.yahoo.com/sources-college-football-playoff-agrees-](https://sports.yahoo.com/sources-college-football-playoff-agrees-to-new-contract-with-espn-161830007.html?guccounter=1)  
20 [to-new-contract-with-espn-161830007.html?guccounter=1](https://sports.yahoo.com/sources-college-football-playoff-agrees-to-new-contract-with-espn-161830007.html?guccounter=1).

21 41. Attached as **Exhibit 39** is a true and correct copy of a document titled, "Financial  
22 Projections Through 2032 For Division I FBS Programs," and dated September 2023. This  
23 document was introduced as Plaintiffs' Exhibit 244 at the deposition of Jennifer Fraser on September  
24 13, 2023.

25 42. Attached as **Exhibit 40** is a true and correct copy of the 2022-2023 NCAA Division I  
26 Manual. This document was introduced as Plaintiffs' Exhibit 179 at the deposition of 30(b)(6)  
27 designee Brad Hostetter for the Atlantic Coast Conference on September 7, 2023.



1           43. Attached as **Exhibit 41** is a true and correct copy of the 2023-2024 NCAA Division I  
2 Manual. This document was introduced as Plaintiffs' Exhibit 390 at the deposition of Mark Emmert  
3 on October 2, 2023.

4           44. Attached as **Exhibit 42** is a true and correct copy of the article published on  
5 NCAA.org, titled "DI Counsel approves changes to notification-of-transfer windows," and dated  
6 October 4, 2023, available at [https://www.ncaa.org/news/2023/10/4/media-center-di-council-](https://www.ncaa.org/news/2023/10/4/media-center-di-council-approves-changes-to-notification-of-transfer-windows.aspx)  
7 [approves-changes-to-notification-of-transfer-windows.aspx](https://www.ncaa.org/news/2023/10/4/media-center-di-council-approves-changes-to-notification-of-transfer-windows.aspx).

8           45. Attached as **Exhibit 43** is a true and correct copy of excerpts from the deposition  
9 transcript of 30(b)(6) designee Charlie Hussey for the Southeastern Conference, dated August 23,  
10 2023. I received a copy of this transcript in my capacity as counsel of record for Plaintiffs in the  
11 above captioned matter.

12           46. Attached as **Exhibit 44** is a true and correct copy of excerpts from the deposition  
13 transcript of Jordan Acker, dated October 16, 2023. I received a copy of this transcript in my  
14 capacity as counsel of record for Plaintiffs in the above captioned matter.

15           47. Attached as **Exhibit 45** is a true and correct copy of excerpts from the deposition  
16 transcript of Kevin Warren, dated October 12, 2023. I received a copy of this transcript in my  
17 capacity as counsel of record for Plaintiffs in the above captioned matter.

18           48. Attached as **Exhibit 46** is a true and correct copy of excerpts from the deposition  
19 transcript of Lynda Tealer, dated September 28, 2023. I received a copy of this transcript in my  
20 capacity as counsel of record for Plaintiffs in the above captioned matter.

21           49. Attached as **Exhibit 47** is a true and correct copy of excerpts from the deposition  
22 transcript of Jamie Pollard, dated November 28, 2023. I received a copy of this transcript in my  
23 capacity as counsel of record for Plaintiffs in the above captioned matter.

24           50. Attached as **Exhibit 48** is a true and correct copy of excerpts from the deposition  
25 transcript of Chad Weiberg, dated November 30, 2023. I received a copy of this transcript in my  
26 capacity as counsel of record for Plaintiffs in the above captioned matter.



1           51. Attached as **Exhibit 49** is a true and correct copy of excerpts from the deposition  
2 transcript of Barbara Osborne, dated March 27, 2024. I received a copy of this transcript in my  
3 capacity as counsel of record for Plaintiffs in the above captioned matter.

4           52. Attached as **Exhibit 50** is a true and correct copy of the Court's Order Granting  
5 Plaintiffs' Motion to Exclude Barbara Osborne's Opinions from the Class Certification Proceedings  
6 [ECF No. 385]. This document was introduced as Exhibit 974 at the deposition of Barbara Osborne  
7 on March 27, 2024.

8           53. Attached as **Exhibit 51** is a true and correct copy of a document titled, "NCAA  
9 External Gender Equity Review," and dated October 25, 2021. This document was introduced as  
10 Plaintiffs' Exhibit 644 at the deposition of Kevin Lennon on October 18, 2023.

11           54. Attached as **Exhibit 52** is a true and correct copy of a document titled, "50 Years of  
12 Title IX We're Not Done Yet," and dated May 2022, available at  
13 [https://www.womenssportsfoundation.org/wp-content/uploads/2022/05/Title-IX-at-50-Report-](https://www.womenssportsfoundation.org/wp-content/uploads/2022/05/Title-IX-at-50-Report-FINALC-v2-.pdf)  
14 [FINALC-v2-.pdf](https://www.womenssportsfoundation.org/wp-content/uploads/2022/05/Title-IX-at-50-Report-FINALC-v2-.pdf).

15           55. Attached as **Exhibit 53** is a true and correct copy of the article published on  
16 Chronicle.com, titled "Hundreds of Colleges May Be Out Of Compliance With Title IX. Here's  
17 Why," and dated October 23, 2019, available at [https://www.chronicle.com/article/hundreds-of-](https://www.chronicle.com/article/hundreds-of-colleges-may-be-out-of-compliance-with-title-ix-heres-why/)  
18 [colleges-may-be-out-of-compliance-with-title-ix-heres-why/](https://www.chronicle.com/article/hundreds-of-colleges-may-be-out-of-compliance-with-title-ix-heres-why/).

19           56. Attached as **Exhibit 54** is a true and correct copy of the article published on  
20 USAToday.com and titled, "Title IX: Falling Short at 50 – Female athletes stiffed on scholarships at  
21 some of the biggest colleges in the country." This document was introduced as Plaintiffs' Exhibit 96  
22 at the deposition of Barbara Osborne on June 15, 2023.

23           57. Attached as **Exhibit 55** is a true and correct copy of the article published on SI.com,  
24 titled, "Michigan's Jim Harbaugh Calls for Revenue Sharing, Comments on Future With Program,"  
25 and dated January 8, 2024, available at [https://www.si.com/college/2024/01/06/michigan-jim-](https://www.si.com/college/2024/01/06/michigan-jim-harbaugh-calls-for-revenue-sharing-comments-on-future)  
26 [harbaugh-calls-for-revenue-sharing-comments-on-future](https://www.si.com/college/2024/01/06/michigan-jim-harbaugh-calls-for-revenue-sharing-comments-on-future).

59. Attached as **Exhibit 57** is a true and correct copy of the article published on ESPN.com and titled, “Alabama coach Kalen DeBoer to make \$10.875 million per year.” This document was introduced as Plaintiffs’ Exhibit 929 at the deposition of Ashley Langer on March 19, 2024.

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/s/ *Steve W. Berman*  
STEVE W. BERMAN